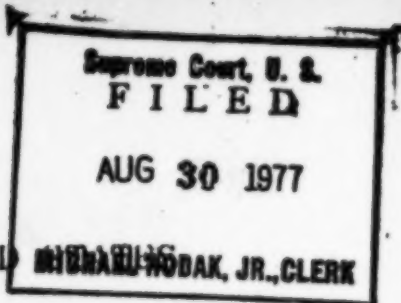


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IN THE
SUPREME COURT OF THE UNITED STATES
October Term , 1976

- - -
No. 76 - 1853
- - -

EDWARD J. LARKIN and JULIA LARKIN ,
Petitioners ,

v.

TOWN BOARD OF THE TOWN OF FLEMING ,
Cayuga County, et al.,
Respondents .

- - -
PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEW YORK ,
APPELLATE DIVISION, FOURTH JUDICIAL
DEPARTMENT, AND TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK

- - -
PETITIONERS' REPLY TO RESPONDENTS' BRIEF
- - -

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Counsel for Petitioners.

Aug. 19, 1977

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IN THE
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EDWARD J. LARKIN and JULIA LARKIN ,
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PETITION FOR A WRIT OF CERTIORARI TO THE
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- - -
PETITIONERS' REPLY TO RESPONDENTS' BRIEF
- - - -

1. Under & pursuant to the provisions of
61 McKinney's N.Y. Town Law §239,p.174 ,
an assessment roll is not to be deemed
finally completed until the publication
of notice, a condition precedent, fundamen-
tal fact to the operation of said Section.

Any other construction would permit the
Town Board to disregard its mandated duty
as in this case by not publishing the

notice in the newspaper at all, & thereby frustrate all appeal rights. R 28, ¶3. Mtr of Levy v. Board of Assessor, 72 Misc 2d 468; Mtr of Ridgeway Club v. Marbach, 19 Misc 2d 714 (950); People ex rel. City of New York v. Horr, 191 Misc 292; People ex rel R. W. & O. R. R. Co. v. Haupt et al., 104 NY 377, 381; 49A McKinney's N.Y. Real Property Tax Law, § 702, pp. 424, 425 -- see companion case herein No. 76-1854, Brief in Opposition, at p. 12, 2. "*** For the purposes of this section an assessment roll shall not be considered finally completed until notice thereof has been given as required by law. " ***"

2." The maximum cost stated in the petition for the establishment of a water district is the maximum expenditure authorized. There is no way of expending moneys in excess of that figure, nor any way of financing expenditures in excess of that figure. The only recourse is to authorize an increase in the maximum cost (Town Law, §202-d). ***." 13 Opinion of the State Comptroller 7 (Feb. 7, 1957) 1st case, opinion 57-51, p. 7.

61 McKinney's N.Y. Town Law §202 (d) (1) at p. 107. R19-20, 19(9)

Whether the proceeding is initiated by petition of the taxpayers requesting such increase or by action of the Town Board, the order of the Town Board can be made only after a public hearing is had, provided that the State Comptroller shall have approved such increase before the public hearing.

Where the action is initiated by the town board, the action is also subject to a permissive referendum. 24 Opinion of the State Comptroller 861 (1968), Opinion 69-923, at p.861. 61 McKinney's NY Town Law §202 (d) (1) at p.107.

All the above New York State absolute condition precedents were completely disregarded, violated, & evaded by the Town Board, & the State; in addition to the provisions of 61 McKinney's N.Y. Town Law §202 at pp.80,81 : "**** 1. The expense of any public improvement *** shall include the amount of all contracts, the costs of all lands and interests therein *** including the total payment of principal remaining on obligations assumed pursuant to paragraph (b) of subdivision twelve of section one hundred ninety-eight, **, interest on loans, legal and engineering services and all other expenses incurred or

occassioned by reason of the improvement or project. ***." R11,19 (9),12(E).

Neither the town board nor the State, or both, can create a debt or incur an obligation for or in behalf of the Town Board or the State against the citizens taxpayers owners of real property situated in Water District No. 3, except to the petition authorized maximum amount of \$348,000, of which said citizens share is only \$174,000. R 29 (13) . Pet. App. 29,32. Pet.7,8,11.

And strictly in accordance with the applicable pertinent N.Y. State Town Law §§ 239,202-d,27(1),191,193,194,196,199,202-a (5),209-e,209-h ,and to the U.S. Constitution,Amdts.1,5,9,14 & the Declaration of Independence. R25-30; Pet. 9, 11-18.

The petition & \$174,000 consented amount of the citizens' indebtedness was a contract with the said citizens that was to be honored. Their public trust can not be violated. Hess v. Bd. of Educ., 41 AD2d 151,153. Expenditures of public funds is constitutionally prohibited in the absence of express statutory provisions to the contrary. The State of New York has no implied powers to contract indebtedness. The credit of its citizens is beyond its control & power ,

& its legislation except only to said consented & authorized \$174,000. P25,26, 27,28(6),29. Pet. App.29 . 13 Op. N.Y. State Compt. 7 (1957),1st case,p.7 ; 15 Op. NY State Compt. No.936(1959),pp.403,404. R 27 (2)(g), 29(13), 25 (7)(a)1. 18 Op. NY State Compt. No.361,pp.192,193.

These are efficient safeguards against the increase of the said \$174,000,& to prevent modification of plans,without the open intelligent,deliberate consent and assent of the said citizens in order to curb raids on the public purse,to give equal enforcement of the laws to every one in N.Y. State,to prevent unauthorized , without jurisdiction,illegal actions under the cloak of secrecy and deception, to prevent imposing taxes & assessments without the citizens' consent; and to give effect to the safeguards under the July 4, 1776 Declaration of Independence that all men are created equal, & that governments derive their just powers from the consent of the governed. Liberty and property are two fundamental principles which underlie government. People ex rel. Johnson v. Village of Whitney Point, 32 Hun (NY) 514; Hyland v. President and Trustees of Village of Ossing, 57 Misc. 262(1907)pp.218,219;

61 McKinney's N.Y. Town Law §196, p. 29;
R 25, 26, 27(2)(g), 27-28, 72, 73.

The acts & actions of the Town Board ,
the State of New York, its legislation, Pet.
App. 30, against the accrued rights, liberties,
privileges & immunities of the citizens Larkin
are without jurisdiction, void, nullities,
unlawful, illegal creation of debt, & unconstitutional
exercise of presumed authority, flagrant abuse of power,
pure arbitrary, capricious exercise of unbridled
power in excess of said \$174,000 and in violation of
the said pertinent provisions, limitations, prohibitions of
the said US Constitution, the N.Y. Town Law sections,
& the July 4, 1776 Declaration of Independence, by the
State's outright denial of citizens' Larkin rights,
privileges & immunities, & its repressions & restraints
making the exercise of said rights, privileges & immunities
impossible.

R 25((7a) (1)), 26, 27, 28(3)(4)(5)(6)(9-12),
29(13) (14) (17). Truax v. Corrigan, 257 US 312,
324, 325, 329, 330, 332-334.

The State has destroyed, deprived, & repressed
Petitioners citizens Larkin of their accrued rights,
privileges & immunities deemed fundamental in the
US Constitution Amdts 1, 5, 9, & 14, the NY Town Law §§196,

202, 202-d (1), 202-a(5), 239, 209-h, 209-e, & July 4, 1776 Declaration of Independence : the right of speech, of assembly, the right to criticize & oppose, the right to persuade, Without equal opportunity to utilize these rights, crucial preliminaries, the idea of government by consent becomes an empty declamation. The essence of free government is 'leave to live by no man's leave' - to be governed by law, a government of laws & not of men, for which open public discourse is essential to our free society. R 25 ((7 (a) 1, 26-30). Truax v. Corrigan, 257 US 312, 324, 325, 329, 330, 332-334. Thornhill v. State of Alabama, 310 US 88, 95, 96, 98.

3. The statements by the Appellate Division in its judgment, Pet. App. 28-34, that: (a):* The aggregate amount of the bond resolution did not exceed the amount of the indebtedness that the Board was authorized to incur ***, Pet. App. 32, 29, is false, erroneous, & contrary to the true facts & certified records. Pet. 7, 8, 11 ; and (b):

"There was substantial compliance with all the applicable provisions of law ***, Pet. App. 32, is false, erroneous & contrary to the realities of the pertinent statutory provisions of the N.Y. Town Law §§

27(1),191,193,194,199,202-d(1),202-a(5),
202,209-e,209-h,& 239., the U.S. Constitu-
tion Amdts 1,5,9,14, & the N.Y. State
Constitution Art. 1, §§ 1,6,8,9,11, & the
said Declaration of Independence .R25(7),
26-30; and

(c) "The claim by petitioners that
they were entitled to notice and a pub-
lic hearing on the bond resolution is with-
out merit, Pet. App.32-33", is also err-
oneous, contrary to the provisions of 61
McKinney's N.Y. Town Law §§202-d (1),209-
h (1),196,202-a (5),239. See Pet.Reply
herein,pp.2,3 ;.the lower Court's state-
ment : (d) "There is no statutory require-
ment for such a procedure. Nor was the
resolution subject to referendum," Pet.
App.33, are each erroneous & contrary to
said §§202-d(1),209-e(3),199,said Consti-
tutions, Declaration of Independence, &
Opinions of N.Y. State Comptroller cited
herein on pages 2,3. R25(7)(a)1,28,(6)
(9), 29(13),(17).

The State of New York by its legisla-
tion & actions,the Courts,& the Town Board
are depriving,divesting petitioners of
their accrued rights,privileges & immuni-
ties by creating State exceptions,evas-
ions,destructions,ignoring of & non-compl-
iance with the said New York Town Law §§

27(1),191,193,194,196,202,202-d, 239,202-a(5), of which the record shows no compliance by the State nor the Town Board. Pet.9,11-18., R 25-30, and of which they are in conflict, thus violating the due process of law & equal protection of the laws guaranteed to the petitioners by the 14th Amendment,the 5th Amendment to the U.S. Constitution, and giving their lawless stamp of approval to N.Y. State's repression,deprival & divestation of free speech,of free assembly, & to petition the Government for a redress of grievances in violation of US Constitution Amdts 1, 9 , & of N.Y. State Constitution, Art. 1,§§1,6,8,9,11.

The New York State Court of Appeals affirmance, 41 NY 2d 802,stamps its approval of lawlessness by the State & its legislative repression in spite of the Petitioners showing to it the gross errors & lawlessness, Pet. 7-11, Pet. Brief Motion for Leave to Appeal to the Court of Appeals of the State of New York,pp.4-30.

The decisions & reasoning of the Courts herein in failing to apply the proper pertinent statutory & constitutional law, & to take legal consideration thereof are monstrously shocking to fundamental fair-

ness, a gross miscarriage of justice in the fair impartial administration of justice in the pursuit & discovery of truth, resulting in the irreparable, gross damaging and gutting of petitioners citizens accrued legal rights, privileges & immunities.

The law as administered and applied, & justified by the State, the Courts, & the Town Board is in flagrant violation of the U.S. Constitution, the N.Y. Constitution, and the N.Y. State Town Law. This is both kangaroo law by the State and ostrich-head-in-the ground State action. Ohio Bell Telephone Co. v. Public Utilities Commission, 301 US 292, 302, 303, 304, 306.

The 14th Amdt U.S. Constitution, binding all State officials, high & low, the political subdivisions of the State, the Judges & the Courts, prevents the State of New York to deprive citizens Larkin of their liberty, & property except by due process of law, & prohibits the State the power or authority to deny them the equal protection of the laws, or to treat them differently from any other citizen in the State of New York, poor or rich.

Blood and life were shed for those precious rights, liberties, privileges & immunities.

ities . No caste system can be allowed in the United States, or in New York State , no matter what the reason. This is a republic form of government, not an oligarchy.

61 McKinney's N.Y. Town Law §195 (1) at p. 27. Thornhill v. State of Alabama, 310 US 88, 92, 93, 95, 96, 98; Crampton v. Zabriskie, 101 US 601, 609; Shelley v. Kraemer, 334 US 1; Boyd v. United States, 116 US 616, 635; Weems v. United States, 217 US 349, 373; Illinois v. Allen, 397 US 337, 346; United States v. United States Gypsum Co., 333 US 364, 393; Speiser v. Randall, 357 US 513; DeJonge v. Oregon, 299 US 353; Miranda v. Arizona, 384 US 436; Brinker-Faris Trust & Savings Co. v. Hill, 281 US 673, 680; Baker v. Carr, 369 US 196; People ex rel Erie R R Co. v. Tax Comm., 246 NY 322, 323-327; McLean v. Jephson, 123 NY 142, 144, 146, 150.

By New York State not scrupulously observing, & not complying with its own laws by its deliberate evasion of them, the decision if allowed to stand would breed contempt for the law, & further encourage the Town Board to do as it wished without having to account for its lawlessness. The State & the Courts would then become partners with the Town Board in its illegal

actions, and be a lawless shield for the Town Board. The citizen would be helpless against the tyrant State. *Calder v. Bull*, 3 Dallas 386.

The very heart of federal guarantees is equal treatment under law to all. *Buchanan v. Warley*, 245 US 60.

Actions of the Town Board, the State of New York, its legislature, & Courts, have denied & deprived petitioners even the constitutional right to have rights, and subjected them to the unconstitutional loss of rights, liberties, privileges and immunities.

They all act as if petitioners had no guaranteed U.S. & N.Y. State Bill of Rights by abridging, extinguishing, destroying their said rights, and in failing to protect their rights.

This outright denial to them of an immunity from inequality of legal protection, of liberty, & property, and subjecting them to unconstitutional, prejudicial, unjust & unequal discriminatory, blatant selective discriminatory application, administration, & interpretation of the law is in conflict with the U.S. Constitution Amendments 1, 5, 9 & 14. There is no power of government to take away accrued

rights as done by N.Y. State to the petitioners. Civil Rights Cases, 109 US 3 ; Keeney v. Village of LeRoy, 22 AD2d 159, 163; Williams v. Village of Port Chester, 72 AD 505 (1902),507-512,524-527.

If "***A Court is not at liberty to shut its eyes to an obvious mistake,when the validity of the law depends upon the truth of what is declared.**",Chastleton Corporation v. Sinclair,264 US 543,547,it can not do so to N.Y. State's tyrannical abuses of power,destroying & corrupting the very integrity of the fact-finding process & a fair trial to petitioners' loss of rights. Home Telephone & Telegraph Co. v. Los Angeles,227 US 278,33 SCt 312,313,315.

4. Due to secrecy,deception,lack of candor & honesty by Respondents & its attorneys, R 32(4),petitioners had to search other records to discover some of the hidden truth favorable to petitioners' rights. Pet. 7-8 . United States v. Nixon,418 US 683,713. Young v. United States,315 US 257,258-259.

In certified report of examination,State of N.Y. Dept. of Audit & Control,Town of Fleming,Cayuga Co.,68M-735,for period 1-1-1964 through 12-31-1967,p.5:"** various water district claims paid were not audi-

ted by the town board nor were abstracts for the payment of said claims found (Town Law, §119); and at p. 6 : " ***Legal Fees Paid from Water District Funds. On May 23, 1966 legal fees were paid to Robert E. White for services rendered during 1963. Records indicate that Mr. White was appointed town attorney for 1963 and received the salary fixed for that position during 1963. The salary of the town attorney is in lieu of all fees, charges, or compensation for all services rendered to the town or any district therein. (Town Law §27(1) and 20 Op. State Compt. page 459(1964) at p. 460, Opinion 64-935). "

And in certified report 74M-527 for period covered 1-1-1971 through 12-31-1973, at p. 5 : " *** additional compensation of \$1,413.60 was paid to the supervisor in 1973 for billing and collecting the water and sewer rents. There was no indication that the increase had been authorized by local law subject to referendum upon petition ((Town Law §27 (1)) ; at p. 1 is listed, in part, : " Supervisor Walter Oliver (1/1/72 - 12/31/73). "

Said Walter Oliver is one of the Respondents in this action.

For the Town Board & its attorneys , there having been no assessors acting in this case, to hold back all the factual pertinent documents from the record as to Water District No.3, R 17(2), (3), (4) is to take the word of Respondents' attorneys & give to them & the Town Board the power to craftily conceal & cover-up their lawless wrongs by silence, inaction, deceit, & be a cloak for the deliberate, wilful , arbitrary, capricious official lawlessness of power in the concealment of truth, & result in the non-"functioning of our adversary legal system which depends upon the availability of relevant evidence in carrying out its commitment both to fair play and to the discovery of truth within the bounds set by law, " Nixon v. Administrator of General Services , US (June 28, 1977), based on all the pertinent facts by mere alleged compliance . R 15(10). Self-righteousness gives no assurance of righteousness nor of compliance.

It would allow the State to make anything due process of law & equal protection of the laws which the State arbitrarily, capriciously chooses to declare as such in flagrant violation of the law , rendering meaningless the prohibitions,

provisions and terms of the cited N.Y. State statutes, & the Constitutions, & cast a N.Y. State killing shroud of death over Petitioners' citizens full panoply of rights & civil liberties.

The green light of State lawlessness would be brightly flashing for Respondents & their attorneys, & they & the State can be expected to expand their lawless jurisdiction, power & authority over its citizens, irregardless of the Town Law, and the Constitutions, U.S. & N.Y. State.

For the Town Board, & its attorneys, not to show the factual compliance, as to the excess moneys over \$348,000, R 15(10) would be to allow them each to "stone-wall" as to the full truth beyond the very bitter end, & to make them the judges of citizens accrued, affected & at stake rights, privileges, immunities, liberties & properties.

It is respectfully submitted that the record herein shows no compliance as to said excess moneys expended by Respondents because there never was nor is compliance with the herein cited N.Y. Town Law Sections. The burden of proof is rightly on Respondents, & is only a fair, just resp-

onsibility of the State to its citizens.
 Hawker v. Internal Revenue Service, 467
 F 2d 787,791,792,795; Mtr of Burke v.
 Yudelson, 51 AD2d 673 (No.36,4th Dept.,
 1976)affg 81 Misc2d 870, 873,877,878;
 46 McKinney's Public Officers Law,Cum Supp.
 1976-77, §85 at p.83,§87(1) (2),at p.84.
 US Code,tit. 5,§552(a) Pub.L.90-23.

Civil Rights Act of April 9,1866.14 Stat.
 27,codified as 42 USCA §§1981 at p.210,
 1982 at p.237,& 1983 at p.250. Commission-
 er v. Shapiro, 96 SCT1062.

5. For the foregoing detailed reasons,as
 well as those stated in the petition,the
 Petitioners citizens refused to pay the
 lawless-created water tax assessment becau-
 se of the lawless tyranny practiced by the
 State upon the petitioners full panoply of
 rights, R 25-30,but have tendered & were &
 are willing & able to pay all the other
 lawful taxes which have been refused each
 & every time that Petitioners tendered
 same to & by the Town & by Cayuga County,
 see companion case Larkin v. Farrell,No.
 76-1854, R31(6),32,even though the said
 water tax was separated from the tax bills
 for 2 other persons on Jan. 30,1969 and
 again for 2 others on Jan. 31,1974.
 R32(7); Mot. for Leave to Appeal to N.Y.

State Court of Appeals,affidavit,R 14(2).
Gardner v. Town of Cameron,155 AD 750,759,
affd 215 NY 682.

CONCLUSION

For the foregoing discussed reasons,as
well as those which have been urged in the
petition, certiorari should be granted.

Respectfully submitted ,

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- - -

61 McKinney's N.Y. Town Law,§239,p.174.
(see Petition pp.23,24,25.)

- - -

61 McKinney's N.Y. Town Law,§202-d,p.107.

Increase of maximum amount to be expen-
ded.1. At any time after the establishment
of an improvement district the maximum am-
ount proposed to be expended for the impro-
vement in such district,as stated in the
petition for the establishment of such
district,may be increased by an order of
the town board provided a petition reque-
sting such increase signed as required by
section one hundred ninety-one is presen-
ted to the town board and provided the
town board shall,after a public hearing

ordered and held in the manner prescribed by sections one hundred ninety-three and one hundred ninety-four, determine that it is in the public interest to authorize the increase of such maximum amount, and provided the comptroller of the state of New York shall have made, prior to such public hearing, an order approving the increase of such maximum amount as stated in the petition. The order of the comptroller shall be prepared in duplicate and one copy thereof filed in the office of the department of audit and control and the other copy in the office of the town clerk of the town.

- - -

61 McKinney's N.Y. Town Law, §202, pp80, 81.
Expense of improvement; how raised.

1. The expense of any public improvement made under authority of this article shall include the amount of all contracts, the costs of all lands and interests therein necessarily acquired including the total payment of principal remaining on obligations assumed pursuant to paragraph (b) of subdivision twelve of section one hundred ninety-eight, the costs of erection of necessary buildings for operation or administration of the improvement, print-

ing,publishing,interest on loans,legal and engineering services and all other expenses incurred or occassioned by reason of the improvement or project. ***"

- - -

61 McKinney's N.Y. Town Law §191,p.11

Petition. ***If such petition shall request the construction or acquisition of an improvement, it shall state the maximum amount proposed to be expended therefor.***.

- - -

61 McKinney's N.Y. Town Law §193,p.8 of 1976-77 Cumulative Annual Pocket Part. Notice of hearing on Petition.

Whenever a petition shall be presented to the town board pursuant to this article,for the establishment or extension of a *** water *** district ***,the board shall adopt an order and enter same in the minutes of its proceedings,reciting in general terms,the filing of such petition,***,and specifying the time when and place where said board will meet to consider the petition and to hear all persons interested in the subject thereof , concerning the same . The board shall cause a copy of such order,certified by the town clerk, to be published at least

once in the official paper, the first publication thereof to be not less than ten nor more than twenty days before the day set therein for the hearing as aforesaid, and shall also cause a copy thereof to be posted on the signboard of the town maintained pursuant to subdivision six of section thirty of this chapter, not less than ten nor more than twenty days before the day designated for the hearing as aforesaid.

- - -

61 McKinney's N.Y. Town Law §194,p.20.

Establishment or extension of district.

1. After a hearing held upon notice as hereinbefore provided and upon the evidence given thereat, the town board shall

*** 2. (b) ** Such further hearing shall be conducted in the same manner as an original hearing upon a petition. ***.

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61 McKinney's N.Y. Town Law §195,p.27.

1. The town clerk shall cause a certified copy of the determination or order of the town board adopted pursuant to the provisions of this article (12), establishing, *** districts *** or increasing the maximum amount proposed to be expended for

the improvement in any district or extension thereof, or determining to construct any improvement authorized by this article , to be duly recorded in the office of the clerk of the county in which the town is located, within ten days after the adoption of such order or determination by the town board, and when so recorded such determination or order shall be presumptive evidence of the regularity of the proceedings for the establishment of such district, of the proceedings instituted for the construction of such improvement and of all other action taken by said town board in relation thereto. *** .

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61 McKinney's N.Y. Town Law §196, p.29
Modification of plans for ** drainage or water

When the town board shall have established a ** drainage or water district & adopted a plan of *** drainage or water system for such district, such plan shall not be modified by the board, nor by any officer of the town, except after public notice given by publication in the official paper of intention to modify the same , which notice shall specify the

particulars in which it is proposed to modify it, and a time and place when the board will consider any objections which may be made thereto, which time shall not be less than ten nor more than twenty days after the first publication of said notice. When any change shall be made in the plan proposed and once adopted, a revised or additional map and profile shall be made showing the change, and all such maps and profiles shall be carefully preserved in the office of the town clerk and open to inspection by all persons interested.

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61 McKinney's N.Y. Town Law §199, p.19 of 1976-1977 Cumulative Annual Pocket Part.

Proceedings for ***drains or water mains.

1. Powers of town board.

Whenever a ** drainage or water district shall have been established by the town board and a trunk system of ** drains or water mains shall have been constructed therein or contracted for, the town board upon a petition, or by a resolution adopted on its own motion, and in the manner herein provided: ***

2. Petition or resolution and hearing.

3. Construction of improvement.

*** If the estimate of the cost of the improvement as prepared by said engineer exceeds the maximum amount proposed to be expended for said improvement as stated in the petition or resolution, the town board shall adopt an order calling a further public hearing at a definite place and time not less than fifteen nor more than twenty-five days after such determination. A notice of such further hearing shall be published and posted in the manner hereinabove in this section provided and there shall be included in such notice a statement that the improvement can not be constructed within the maximum amount proposed to be expended as stated in said petition or resolution the cost of said improvement as estimated by the engineers, a brief description of the improvement and the place and time at which the board will conduct such further hearing.

*** Such further hearing shall be conducted in the same manner as an original hearing upon a petition or resolution.

In any case where such public hearings were held as a result of the adoption of a resolution by the town board in lieu of

taking action pursuant to petition, the resolution provided for shall be subject to a permissive referendum ** article seven of this chapter, except as hereinafter provided. The proposition submitted must be approved by the affirmative vote of the owners of real property situate in the proposed benefited area described in the resolution as shown upon the latest completed assessment roll of the town, voting on such proposition. A petition requesting a referendum shall be sufficient if it is initiated and signed and acknowledged in the same manner as a petition for improvements pursuant to this section. *****

4. Effect of section limited.

This section shall not apply to the construction of any *** drain or water main described in any map or plan which shall have accompanied the petition or resolution for the establishment of a *** drainage or water district, provided that the cost of constructing such *** drain or water main together with the costs of every other improvement constructed pursuant to such petition or resolution shall not exceed the maximum amount proposed to be expended as stated in such petition or

resolution.

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61 McKinney's N.Y. Town Law §202-a(5),
p.28 of 1976-77 Cum. Annual Pocket Part
Expense of maintenance

After the improvement is constructed and completed, it shall be maintained by the town board and the expense of such maintenance shall be a charge upon the district or upon the lots or parcels of land against which the expense of the improvement was charged.

5. The town board shall hold a public hearing in the manner and upon the notice prescribed by section 239,***.

After such public hearing, it shall be the duty of the town board to adopt such assessment roll as originally prepared or to amend or change such assessment roll or to prepare a new roll, but no such amended, changed or new roll shall be adopted unless the town board shall hold a hearing thereon in the manner and upon the notice prescribed for in the original hearing. Such original, amended, changed or new roll shall be adopted at least thirty days before the annual meeting of the board of supervisors at which taxes are

levied in the county in which the town is situated, ***.

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61 McKinney's N.Y. Town Law §209-c,p.128
Establishment or extension of district

3. If and when the town board shall determine in the affirmative all of the questions set forth in subdivision one of this section, the board may adopt a resolution approving the establishment or extension of the district as the boundaries shall be finally determined and the construction of the improvement or providing of the service therein which resolution shall be subject to a permissive referendum in the manner provided in article seven of this chapter, except as hereinafter provided. The proposition submitted must be approved by the affirmative vote of a majority of the owners of taxable real property situate in the proposed district or proposed extended district as shown upon the latest completed assessment - roll of the town, voting on such proposition. A petition requesting a referendum shall be sufficient if signed and acknowledged by the owners of taxable real property situate in the proposed district

or proposed extended district, as shown upon the latest completed assessment-roll of said town in number equal to at least five per cent of the total number of such owners, or by one hundred of such owners, whichever is the lesser. ****

The town clerk shall cause to be prepared and have available for distribution proper forms for the petition and shall distribute a supply to any person requesting same.

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61 McKinney's N.Y. Town Law §209-h, p.135.

Increase of maximum amount to be expended.¹ 1. At any time after the establishment of an improvement district or an extension thereof pursuant to the provisions of this article or any other applicable provision of law, the maximum amount proposed to be expended for the improvement in such district, as stated in the notice of public hearing or the establishment or extension of such district, may be increased by an order of the town board provided that the town board shall, after a public hearing is held in the manner prescribed by section two hundred nine-d of this chapter, determine that it is in the public interest to authorize the increase of such maximum

amount, and provided the comptroller of the state of New York shall have made, prior to such public hearing, an order approving the increase of such maximum amount as stated in the said notice of hearing. The order of the comptroller shall be prepared in duplicate and one copy thereof filed in the office of the department of audit and control and the other copy in the office of the town clerk of the town. The order of the town board increasing the maximum amount to be expended shall be subject to a permissive referendum in the manner provided in subdivision three of section two hundred nine-e of this chapter.

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61 McKinney's N.Y. Town Law §27 ,p.24 of 1976-1977 Cum. Annual Pocket Part.

Compensation of town officer, officials and employees.

1. The town board of each town shall fix, from time to time, the salaries of all officers and employees of said town, whether elected or appointed, and determine when the same shall be payable. The town board shall not fix the salaries of the members of the town board , ***, at an amount in excess of the amounts respectively specified in the notice of hearing on the pre-

liminary budget pursuant to section one hundred thirteen of this chapter.

* * *

Salaries shall be in lieu of all fees, charges or compensation for all services rendered to the town or any district or subdivision thereof ,pursuant to law,***.

No town officer or employee shall retain any fees or moneys received by him in connection with his office, but such fees or moneys shall be the property of the town and be paid to the supervisor not later than the fifteenth day of each month following receipt,***.

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46 McKinney's Public Officers Law, Cumulative Annual Pocket Part 1976-1977, §85, p. 83. Legislative intent

The legislature hereby finds that a free society is responsive and responsible to the public, and when the public is aware of government actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant

increase in revenues and expenditures, it is incumbent on the state and its localities to extend public accountability wherever and whenever feasible.

The people's right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that government is the public's business and that the public, individually and collectively *** should have unimpaired access to the records of government.

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46 McKinney's N.Y. Town Law §87, p.84
Cum. Annual Pocket Part 1976-77.

Definitions.

As used in this article : 1. "Agency" means any state or municipal board, bureau, **, council, **office or other governmental entity performing a governmental or proprietary function for the state of New York or one or more municipalities therein.

2. "Municipality" or "municipal" means or has reference to any ** county, town, *** water district, *** establish-

ed by law for any public purpose.

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42 USCA §1981, p.210

Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State *** to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subjected to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

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42 USCA §1982, p.237

Property Rights of citizens

All citizens of the United States shall have the same right, in every State **, as is enjoyed by white citizens thereof to *** hold *** real and personal property.

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42 USCA §1983, p.250

Civil action for deprivation of rights Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ***, subjects or causes to be subjected, any citizen of the United States

*** to the deprivation of any rights ,
privileges or immunities secured by the
Constitution and laws shall be liable to
the party injured in an action at law ,
suit in equity, or other proper proceed-
ing for redress.

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2 McKinney's N.Y. State Constitution,
Art.1 : BILL OF RIGHTS

p.191, Section 1. No member of this state
shall be disfranchised, or deprived of any
of the rights or privileges secured to any
citizen thereof, unless by the law of the
land, ***.

p.38 of 1976-77 Cum. Annual Pocket Part,
§6. ***No person shall be deprived
of *** liberty or property without due pro-
-cess of law.

p.694, §8. Every citizen may freely spe-
ak, write *** on all subjects ***; and no
law shall be passed to restrain or abridge
the liberty of speech ***.

p.713, §9. 1. No law shall be passed
abridging the rights of the people peace-
ably to assemble and to petition the gov-
ernment, or any department thereof; ***.

p.720, §11. No person shall be denied
the equal protection of the laws of this
state or any subdivision thereof. ***.

U.S.C.A. Const. Amend. 1 to 4, Amend. 1, pp. 5,19 : Congress shall make no law *** abridging the freedom of speech, *** or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

U.S.C.A. Const. Amend. 1 to 4, & U.S.C.A. Const. Amend. 5, p.5 : Amend. 5 ,p.5: No person shall *** be deprived of *** liberty , or property without due process of law.

U.S.C.A. Const. Amend. 1 to 4, p.6, & U.S.C.A. Const. Amend. 6 to 12,p. 827 : Amend. IX . The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S.C.A. Const. Amend. 1 to 4, p.7 , & U.S.C.A. Const. Amend. 13 to 14, p.33 : Amend. 14, Section 1. **** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of *** liberty, or property , without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.